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The Position of Licensed Industries With Special Emphasis of The Republic of Macedonia

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Abstract

Regulation of professions that provide services to the public is necessary to ensure the quality of their services and to protect the interests of their users. However, it can have adverse effects like eliminating or restricting the competition and reducing the transparency. Therefore, establishing a balance between the interest that is supposed to be achieved by regulation and the need to allow competition is becoming more obvious. This is particularly evident when applying regulatory standards in small economies. While the main principles of competition and regulation as developed in major economies are suitable for small economies, the application should be different due to the characteristics of the small and limited markets. The paper will cover three professions - lawyers, accountants and architects as the most numerous and longest present on the Macedonian market. With the review of the regulation of these professions, a comparison with the regulation of these professions in other countries will be done. The purpose of the paper is based on the comparison and the experience in the operation of the regulated professions and industries in Macedonia, to make recommendations for the establishing regulatory systems that will enable protection of public interests and development of these industries.

Keywords: *Licensed industries, Profession, Regulation*

Track: *Governance*

Word count: 4.758

1. Introduction

The people rely on the ethical integrity of the professionals because they provide intangible services and the customers need to believe that they receive quality services. This is an explanation for the need of regulation of these professions carried out by governments or their bodies, or can be transferred to self-regulated organizations that have been delegated regulatory power.

The goal of this paper is to review the professional industry in Macedonia in terms of regulation and its impact on the competition in these professions and to make suggestions for the future directions of the regulation. The paper includes lawyers, accountants and architects, and the conclusions may also apply to related professions (notaries, engineers, tax

advisors, auditors). A comparison will be made with ten countries of Central and Eastern Europe, members of the European Union.

When adopting the conclusions and proposals for regulation and competition in professional occupations in the small markets we have in mind the regulated industries (capital market, pension funds, university education) and the experience from their regulation, the impact of the competitive behavior in terms of the large number of service users in these industries and the consequences of the failure of the services providers on the public opinion and trust in these industries. Furthermore, these industries are sensitive because of the additional high requirements and conditions for providing adequate and costly capacious and technical conditions. The regulation in Macedonia restricts market entry of these services from a territorial point of view only in the case of the notary professions. In the case of the other professions, the entry is open to all who meet the anticipated requirements for the provision of those services.

In these environments, the question whether the regulation of professions and industries, particularly of the small markets, is necessarily in the interests of their users is being asked. The reason for this dilemma is the non-methodical issuing of approvals for such works to at all that would prove that they meet the required conditions. The loss of jobs during the transition process because of the collapse of the large companies that engaged large workforce increased the number of new providers of professional services. In order to take a market share they decrease the prices, and this is no guarantee for the quality of services they offer. This can disrupt the entire market of these services by violating the trust in all the service providers, or would jeopardize the revenue cost-effectiveness of the providers of those services. Such behavior is very notable among the brokerage houses (offering service with 0% commission) and the accountants.

The experience from the regulated professions in Macedonia in the recent years shows examples of the negative consequences from the unrestricted entry of participants in the small and underdeveloped markets – the capital markets and the high amount of capital for the founders of the Pension Funds. During the market boom of the Macedonian capital market caused by the global trend of extreme optimism for the growth in share price, the number of the brokerage houses in Macedonia has increased from 17 in 2006 to 29 in 2008. As a result of the sharp decline in the prices and trade in stocks, most of the brokerage houses, mainly the start-ups, were faced with financial problems and the reverse process of closing and reducing their number to 18 in 2012 started. The legal regulation envisaged issuing only two licenses for establishment of companies for managing pension funds, which enabled legal duopoly. Based on the duopoly position, and in the absence of legal limitations on fees, the companies introduced an extremely high entry fee (9.9%), significantly higher than the fees in the other countries with similar pension systems and at the beginning of the functioning of these systems (from 0.8% in Croatia and 1% Kazakhstan, to 6% and 8.5% in Hungary and Poland, respectively). After the negative consequences from restricting the entry of more participants were observed, a legal determination of the highest commission was introduced in 2010 and the market was open for other participants. However, despite this, the strict conditions for market entry (the founder of the company must have capital of at least 20 million EUR) and the small number of companies in Macedonia that were eligible (only three, and two of them already are founders of pension funds) did not contribute to the establishment of new companies for managing pension funds.

The listed service providers are characteristic because of the: strict requirements for establishing companies and operating (restricting the founder, a high amount of initial capital, high technical requirements, a minimal number of licensed personnel, fees for the regulatory bodies) and covering a large number of users of these services. The nonexistence of limiting the number of providers of such services on the market can lead to closing down a number of the companies due to the inability to cover the high cost of operations. This can cause adverse reputational consequences for all the members of these industries. In terms of limited market for such services, planning of the necessary offer of individual services is required because of the following: providing offered services that are in the interest of the development of these industries in terms of wider public interest (producing highly educated personnel in certain areas, brokerage portfolio management for clients), protection against failure of the market for these services, protection of the interests of the users of those services and encouraging the growth of these industries.

2. The Regulation of industries and professions and competition

We depend on professionals to maintain our health, handle our legal and financial affairs, protect our political interests and manage businesses that provide us employment and consumer goods (Jennings et al.1987). Not only that the individuals are more dependent on the professionals, but they have great importance for the society, nearly every market segment of the modern economy - manufacturing, technology, transportation, energy, etc. - intersects with the professional services industry at multiple levels - lawyers, accountants, engineers (Williams and Nersessian, 2007). On the other hand they are a powerful economic force that has a growing role in the global economy. According to the European Commission (Boot et al., 2013), there are 800 different activities in the EU "that are considered as regulated professions in one or more member states and relate to service providers with specific qualifications." The professional services accounted for 10.2% of GDP in the EU and 2.4% in the number of employees (The CutyUK, 2013). In Macedonia, the professional services are not yet very developed. Their share in GDP in 2014 was 2.3%, only legal, accounting and architectural and engineering activities accounted for 1.7%, while the share of total employment accounted for 2.9% i.e. 2.2% (State Statistical Office of Republic of Macedonia, 2015).

The activities of the professional services providers are regulated in almost all countries, either directly or by delegation of the regulatory power of the professional associations. The regulation of these professions may relate, among other things, to the following: the number of participants in the profession, the price professionals can charge, the organizational structure, the ability to advertise and the work that can be performed by the members of the profession. Such restrictions can reduce or eliminate the competition between the service providers and thus reduce the incentive of the professionals for cost efficient operation, lower prices, higher quality or supply of service innovation. In the past, there was a growing knowledge in many countries (Schultze, 2007) that the occupational regulation has a direct or indirect effect on reducing the competition in the market of professional services.

In the efficient markets, the competition provides significant benefits for the service users through a possibility for a better selection, lower prices and better quality of goods and services. However, the markets do not always deliver the best results for the consumers of

goods and services, the companies or governments. To resolve this, the governments set legal and institutional framework for the operation of the markets and the companies. This way, the governments intervene to achieve specific goals and to prevent collapse of the markets. The unlimited rule of law of free competition in small markets in certain regulated professions can lead to violation of public trust, market failure or destruction of interest for new participants to participate.

The criticisms for the limitations on the regulations, the consequences on the prices and the quality of services, and the availability of services to all users are very common. Numerous studies in various professions have been conducted to determine the impact of the restrictions on the entry of the prices of services, and the results are confronting. Most of the studies were conducted in developed countries with highly developed markets of professional services. A comprehensive review of these papers done by Olsen (1999) confirms that the restrictions on entry into the profession cause higher prices. The study of OECD (2002) also shows the negative effect of the excessive regulation on service users, like higher prices and lower quality. Other research (Stephen and Love 1999) shows that the increased number of lawyers does not affect the increased competition in terms of cost reduction and greater range of services. Therefore, Van den Bergh (2006) states that it is difficult to determine a general conclusion about the effect of the input constraints on the regulated professions.

2.1 How the profession is regulate in the Republic of Macedonia

The term "regulated profession" means any professional activity or group of professional activities legally regulated for which appropriate competences are required.¹ This arose from the need of harmonization of national legislation with the European regulation on mutual recognition of professional qualifications (36/2005 / EC and 55/2013 / EU), which was the main reason that Macedonia has started the preparation of a register of regulated professions.

The Republic of Macedonia establishes standards, laws and procedures for the regulated professions. However, it does not define what is regulate profession. Furthermore, the country establishes standards for education and regulates the process of practice, especially the practice during studies² and after finishing their studies. Unfortunately, Macedonia still does not have Law on Internships, that should regulate mainly the rights and obligations of the persons who are engaged in internships after graduation.³ Currently, the only regulation that deals with it in Macedonia, is the Macedonian Labor Law.⁴ Probably, this

¹ See Law on recognition of professional qualifications, Official Gazette of the Republic of Macedonia, no. 171/10

² Law on Volunteering, Official Gazette of the Republic of Macedonia No. 85/2007 и 161/2008

³ The legal basis for engaging practitioners is based on the operational plans of the Ministry of Labor and Social Welfare. For more information see. Tushevska, Misheva, Koshevaliska: Practical Teaching for Students in the Republic of Macedonia - Challenges and Perspectives of Students at the Law Faculties, Goce Delcev University, Stip, 2017

⁴ Labor Law, Official Gazette of the Republic of Macedonia, no. 62/2005; 106/2008; 161/2008; 114/2009; 130/2009; 149/2009; 50/2010; 52/2010; 124/2010; 47/2011; 11/2012; 39/2012; 13/2013; 25/2013; 170/2013; 187/2013; 113/2014; 20/2015; 33/2015; 72/2015; 129/2015 и 27/2016.

is the main reason that employers can not understand the differences between the volunteering and internships.

A quick overview at the Macedonian educational system, shows that the impact of the Bologna process influenced at the overall educational process, by which the universities were pushed to make new programmes for studies compatible to the European countries.

In accordance with this, students of legal and economic sciences, as well as other social sciences, are obliged to have an internship during studies within the courses they attend in the first cycle of studies. Macedonian Law on Higher Education⁵, determines that in each academic year the student must attend practical classes – (internship) which can not be shorter than 30 days, as one of the conditions for enrollment in the next academic year. Namely, according to the Law on Higher Education, the first cycle of studies in the social sciences can be 180 ECTS, 240 ECTS and 300 ECTS. Usually, studies with 300 ECTS are regulated professions. A five-year study program (with 300 ECTS) gives the students opportunity to apply to the Academy of Judges and Public Prosecutors of the Republic of Macedonia. According to this regulation, the candidates have to earn 300 ECTS or to have graduated four years of law studies.⁶ Except the judges, public prosecutors, Macedonian legal system counts in regulated professions as well the lawyers⁷, notaries⁸, bailiffs⁹ and mediators.¹⁰ In accordance with the mentioned laws and bylaws, these professions have to obtain special licence by the state authorities, for which they are obliged to fulfill certain general and specific conditions in order to operate in their professions. The operation of accountants is regulated in the Accountants Law.¹¹

3. Methodological foundation

The review of the regulatory framework of the regulated professions is made on the basis of the relevant literature, texts of laws and other sources, such as: websites of professional associations, other online sources and individual members of the profession. The survey includes the following occupations:

- Lawyers (from the legal services),
- Accountants (from the accounting services) and
- Architects (from the technical services).

The regulation these groups of professions is reviewed through the basic limiting regulations:

- Regulation of the Entry.
- Regulation of the price.

⁵ Ibid

⁶ See article 44 from the Law on Academy for Judges and Public Prosecutors, Official Gazette of the Republic of Macedonia no. 88/10, 26/13 and the Courts Law, Official Gazette of the Republic of Macedonia no. 58/06, 35/08, U.no.256/07, U.no.74/08, 150/10, U.no.12/11

⁷ Law on Attorneys of Law, Official Gazette of the Republic of Macedonia no. 53/2002, 60/2006, 106/2008, 135/11, 113/13

⁸ Law on Notary, Official Gazette of the Republic of Macedonia no. 72/16

⁹ Law on Enforcement, Official Gazette of the Republic of Macedonia no. 72/16

¹⁰ Law on Mediation, Official Gazette of the Republic of Macedonia no. 188/13, 148/15, 192/15

¹¹ Official Gazette of the Republic of Macedonia no. 95/12, 188/13, 27/14 и 154/15

- Restriction of advertising and
- Business structure and inter-professional collaboration.

Except the analytical-descriptive and comparative method, in the paper we also used the interview in order to have a deeper analysis and data gained from the students from the state and private universities in Macedonia. For this purpose, we made interviews on students that have graduated on the law faculties as well as the faculties of economy in so called “old system” with 4 academic years. Also the interviews were made with active students. One of the most important conclusion is that the students that have graduated before the fully implementation of the european credit transfer system, think that the biggest disadvantage in their studies is the absence of internship – (practical knowledge). On the other hand, the active students¹² think that the internships is one of the greatest advantages in their studies, recognizing the opportunity for networking and possibility for competitiveness on the labor market.

The achieved results are compared with the results from Stocktaking Exercise on Regulation of Professional Services of the EUROPEAN COMMISSION (2004) that includes the ten new EU member states (Estonia, Latvia, Lithuania, Cyprus, Malta, Poland, Slovenia, Slovakia, Hungary and Czech Republic). Eight of these countries are in Central and Eastern Europe.

4. Results

In the countries researched, the requirements for joining the professions are usually high: a certain number of years of university education and professional experience, successful passing of the exam and mandatory membership in professional associations. In all these countries the conditions for joining the law profession are strictest: five years of university education and on average two and a half years of professional experience, passed expert exam and mandatory membership in professional associations. The accounting services require a minimum period of education (three years), relevant professional experience (for example in Poland it is three years) and successful passing of the exam. The membership in professional associations is not compulsory in Latvia and Poland. The process for obtaining a license for architects takes seven to ten years and consists of a five-year university education, a minimum of three years professional experience (five in Lithuania), successful passing of the professional exam (except in Estonia and Hungary) and with certain exceptions, membership in a professional association.

Table 1: Countries and professions according licensing regulations				
Profession	Level of education	Previous professional experience	Expert exam	Mandatory membership in a professional association
Lawyers	All countries	All countries	All countries	All countries

¹² Students from the 3-rd, 4-th or 5-th year of first cycle of studies

Accountants	All countries	All countries	All countries	All countries (except Latvia and Poland)
Architects	All countries	All countries	All countries (except Estonia and Hungary)	All countries (except Estonia, Lithuania and Latvia)

Source: Stocktaking Exercise on Regulation of Professional Services of the EUROPEAN COMMISSION (2004). For Macedonia the information was provided by the legal regulations and professional bodies.

The prices of the services are less regulated in all the countries covered in the paper; the regulation of the legal services is the highest. In some countries, the prices for the legal services are defined as minimum amount, others have a maximum (Latvia), some determine fixed amount of prices (Estonia) and there are countries (Slovakia and Lithuania) that foresee reference amounts. The professional associations in Poland and Hungary do not interfere in the level and the structure of the fees charged by the legal professionals. The prices of the services of the other two professions are significantly less regulated, especially in accounting (with the exception of Slovakia). In some countries there is loose regulation of the prices for architectural services in a form of a recommendation (Czech Republic, Hungary, Latvia, Slovakia and Slovenia) or there is no limitation.

Table 2: Countries and professions according the type of regulation of the prices of services

Profession	Minimal prices	Maximal prices	Fixed prices	Referent	Recommended prices	Not regulated
Lawyers	Cyprus, Malta, Check Republic, Slovenia	Latvia	Estonia, Macedonia	Slovakia and Lithuania		Poland and Hungary
Accountants				Slovakia		
Architects					Check republic, Hungary, Latvia, Slovakia and Slovenia	All other countries

Source: Stocktaking Exercise on Regulation of Professional Services of the EUROPEAN COMMISSION (2004). For Macedonia the information was provided by the legal regulations and professional bodies.

In most of the surveyed countries (except Macedonia) advertising of legal professionals is heavily regulated. There is a general prohibition on advertising in Estonia, Lithuania and Poland. Lawyers in Poland cannot advertise, while the legal advisors have limited freedom of publicity (they can provide information on the scope of activities, areas of legal advice, professional experience and the basis for calculation of the award). In the Czech

Republic, Hungary and Slovenia most forms of publicity are allowed, and in Latvia only some. In Slovakia advertising is allowed, but with significant restrictions.

Profession	Advertizing prohibited	Limited	No limitation
Lawyers	Estonia, Lithuania, Poland	Slovakia, Check Republic, Hungary, Slovenia and Latvia	Macedonia
Accountants		Poland	All other countries
Architects			All countries

Source: Stocktaking Exercise on Regulation of Professional Services of the EUROPEAN COMMISSION (2004). For Macedonia the information was provided by the legal regulations and professional bodies.

The rules for the structure of these professions are mainly related to opening branches, legal form of organization and the opportunity for inter-professional association. These rules include a requirement for liability insurance for damage by performing services. There is a low level of regulation in the countries surveyed. The regulation of location and diversification for performing legal services exists only in Slovenia, in the other countries there is no such regulation for any of the professions covered. The form of organization of the work is regulated in all the countries and for all the professions. Insurance against damage is required for all professions and countries subject to review, with few exceptions. Partnerships with other professions are not allowed to lawyers in all the countries, and for the accountants and the architects there is no limitation in this regard.

Profession	Location and dispersion	Form of legal subject	Mandatory insurance	Partnership with other professions
Lawyers	Slovenia	All countries	All countries except Latvia	All countries
Accountants		All countries	All countries except Latvia	
Architects		All countries	All countries except Estonia and Hungary	

Source: Stocktaking Exercise on Regulation of Professional Services of the EUROPEAN COMMISSION (2004). For Macedonia the information was provided by the legal regulations and professional bodies.

The comparison of the four points of regulation of the three examined regulated professions in Macedonia with the corresponding ten countries covered by the European

Commission report, shows similar legislation in Macedonia. The largest deviations are observed in the regulation of advertising the services, which is not regulated in any of the covered professions in Macedonia. Notable is the relatively late introduction of the regulation of the accounting services and the absence of functioning of the self-regulatory body of the accounting profession.

5. Conclusion and recommendation

By increasing the number of employees engaged in performing these services and the participation in the creation of national products, the professional services increased their importance for the economy in all the countries. The growth of the professional services is achieved in the developing countries, where it was caused by the changes in the economy during the transition process. In the in recent years, the importance of the professional services is growing in Macedonia. New professions are emerging: notaries, administrators, tax advisers, brokers, investment advisors, accountants, auditors.

These professions are characterized by high levels of regulation caused by the existence of information asymmetry and the risk of moral hazard in the provision of the services. Because of these reasons, protection for the profession and the service users is necessary. The developing countries in the transitional period towards building market system are adopting the regulatory standards of the developed countries. But the question is, whether the same regulation is appropriate for all the conditions and markets? The examples from the practice of the regulated industries in Macedonia show a negative impact on the noncritical regulation on the prices and the incentives to join one of these industries. The conclusion from the comparison of the restrictive elements of the regulation of the surveyed professions in Macedonia is that they are regulated at approximately the same level as in the countries with which the comparison is made, with a few exceptions in the accounting profession.

The anti-competitive regulatory restrictions are subject to criticism for reducing the effective operation of these professions; particularly emphasized is the quantitative and qualitative restriction on joining the profession, which according to some increases the prices of services of those professions and reduces access for all users. These allegations are not supported in the results of the practical research done in various regulated professions in developed countries.

The regulation is an important factor in determining the possibilities and the prospects of the industries of professional services. For this reason, a regulatory system that protects and enables the development of the regulated industries is required. This is particularly important for the small markets, where the regulated industries and many of the professions are new, so we need to establish a framework that will enable their development and growth of the trust in the service providers and the services they provide. Based on the review of these professions and industries, we consider the following suggestions as necessary for accomplishing these results:

- Using a system of revisions on the effects of the regulation and making necessary changes to provide protection that meets the objectives of the regulation,
- Implementing measures to harmonize the competition and the regulation and

- Involving the service users in the process of regulation.

A key requirement and necessity is by using the instruments, the measures and the tools of regulation to enable fair competition through the establishment of "just playing field" for all the participants in the regulated market and the trust in the market by the users of the services.

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